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REMARKS

I. INTRODUCTION

In response to the Office Action dated March 7, 2006, please consider the following remarks.

II. STATUS OF CLAIMS

Claims 1-5, 8-10, 12, 14-50, 53-55, 57, 59-92, 94, and 95 are pending in the application.

Claims 1, 2, 12, 14-16, 23, 24, 27-43, 46, 47, 57, 59-61, 68, 69, 71-88, 91, 92, 94, and 95 were rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 6,268,849 to Boyer and U.S. Patent No. 6,005,565 to Legall, and these rejections are being appealed.

Claims 3-5, 8-10, 17-22, 25, 48-50, 53-55, 62-67, and 70 were rejected under 35 U.S.C. §103(a) as being obvious in view of Boyer and Legall, in further view of U.S. Patent No. 6,177,931 to Alexander, and these rejections are being appealed.

Claims 44, 45, 89, and 90 were rejected under 35 U.S.C. §103(a) as being obvious in view of Boyer and Legall, in further view of U.S. Patent No. 6,219,839 to Sampsell, and these rejections are being appealed.

III. GROUNDS OF REJECTION TO BE REVIEWED

Whether claims 1, 2, 12, 14-16, 23, 24, 27-43, 46, 47, 57, 59-61, 68, 69, 71-88, 91, 92, 94, and 95 are patentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,268,849 issued to Boyer (hereinafter, the Boyer reference) in view of U.S. Patent No. 6,005,565, issued to Legall (hereinafter, the Legall reference).

Whether claims 3-5, 8-10, 17-22, 25, 48-50, 53-55, 62-67, and 70 are patentable under 35 U.S.C. § 103(a) over Boyer and Legall, in view of U.S. Patent No. 6,177,931 to Alexander (hereinafter, Alexander reference).

Whether claims 44, 45, 89, and 90 are patentable under 35 U.S.C. § 103(a) over Boyer and Legall, in view of U.S. Patent No. 6,219,839 to Sampsell (hereinafter, Sampsell reference).

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IV. ARGUMENTS

A. Summary

All of the Applicants claims are being rejected as unpatentable over Boyer in view of Legall (and some in further view of additional references). The Examiner acknowledges that Boyer fails to disclose "displaying all of the media programs scheduled to be available on the channel during the first day part", but asserts that Legall (in FIGs. 3a and 3b) discloses these features by disclosing a web browser based EPG that *could* be used this way, if the user used a combination of filters in a way that none of the prior art references teach.

In the context of media program guides, it is tempting to argue that it is a simple and obvious matter to add features that are present in one program guide to another. Ergonomic factors and limited space on displays with limited resolution demand judicious choice of what information be provided in what context and how that information is presented. In the art of program guides, Boyer and Legall are actually quite dissimilar. Unlike Legall, Boyer is directed to an Internet television programming guide, which typically allows navigation by a mouse-driven cursor and much higher resolution than does a typical television set. Factors that drive the ergonomics of this design are substantially different than those that would drive program guides that are displayed by a television. The Final Office Action dismisses the significant differences between Internet and Television based user guides because "Claim language requiring display of a menu guide on a television set is not present" ... but that misses the point. The point is that it is improper to combine the Boyer and Legall as suggested.

B. The Cited References

1. The Boyer Reference

Boyer discloses an Internet television program guide system with embedded real-time data and an Internet television program guide system is provided that allows a user at a multimedia system to access television program listings containing embedded real-time data over an Internet communications link. The television program listing may be for a sporting event that is currently being broadcast and the real-time data may be the current score of the event, the current weather where the event is taking place, or any other suitable real-time information on the event. The real-

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time data may be presented in the form of video stills, video clips, textual information, audio clips, or suitable combinations of such media. The user can perform database searches on the program guide listings to search for a desired program. If desired, the user can obtain additional information on a selected program by accessing an associated web page.

2. The Legall Reference

Legall discloses an integrated search of electronic program guide, internet and other information resources and a power search tool that enables a user to search an electronic program guide and other information resources with one search. A search tool window is displayed that enables a user to select filter elements used to search. Alternately, in one embodiment, the filter elements are automatically selected from predetermined program elements, such as title or subject, of a selected program in the electronic program guide. The search tool performs a search of the electronic program guide and information resource and modifies the display of the electronic program guide to identify those programs that are filtered from the search. Similarly, a window displays information indicating those portions of the information resource that have been filtered during the search. Preferably the information resource is the world wide web and the URLs of the web sites that include information relative to the filter elements are displayed. The user can then view the electronic program guide and select broadcasts of programs to display as well as proceed to the web sites indicated simply by selection of the corresponding elements on the display.

3. The Sampsell Reference

Sampsell discloses an on-screen electronic resources guide and a system for providing an on-screen electronic resource guide (ERG) includes an audio/visual display device; plural peripheral devices, each having an active mode and an inactive mode; an interface located between said audio/visual device and said peripheral devices; and an ERG generator for providing an ERG display for displaying programming available to said audio/visual display device from said peripheral devices when such devices are in their active mode. A method for providing an on-screen electronic resource guide (ERG) in an audio/visual display device having plural peripheral devices connected thereto over an interface, wherein each peripheral device has an active mode and an inactive mode

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includes generating an ERG display for displaying programming available to the audio/visual display device from said peripheral devices when such devices are in their active mode, and controlling a peripheral device from the ERG display.

2. Claims 1, 2, 12, 14-16, 23, 24, 27-43, 46, 47, 57, 59-61, 68, 69, 71-88 are

Patentable Over Boyer in View of Legall

In paragraph (2), the Final Office Action rejected claims 1, 2, 12, 14-16, 23, 24, 27-43, 46, 47, 57, 59-61, 68, 69, 71-88, 91, 92, 94, and 95 under 35 U.S.C. §103(a) as unpatentable over Boyer et al. (Boyer), U.S. Patent No. 6,268,849, in view of the Legall et al. (Legall), U.S. Patent No. 6,005,565.

Applicant respectfully traverses these rejections.

With Respect to Claims 1, 2, 12, 14-16, 23, 24, 27-43, 46, 47, 57, 59-61, 68, 69, 71-88: Claim

1 recites:

*A method of providing media program information, comprising the steps of:
accepting a command to select an active channel from a plurality of selectable channels;
accepting a command to provide a menu guide selected from a plurality of menu guides together defining a media program information space segmented by daypart, wherein the menu guide is associated with a first daypart; and
providing the menu guide, the menu guide comprising a menu guide content portion presenting media program information regarding media programs consisting of all of the media programs scheduled to be available during the first daypart on a channel consisting of the active channel.*

The First Office Action acknowledged that Boyer fails to disclose “displaying all of the media programs scheduled to be available on the channel during the first day part”, but asserted that Legall (in FIGs. 3a and 3b, reproduced below) disclose these features by disclosing a web browser based EPG that the user may use a number of filter features, thus enabling a user to further refine their search.

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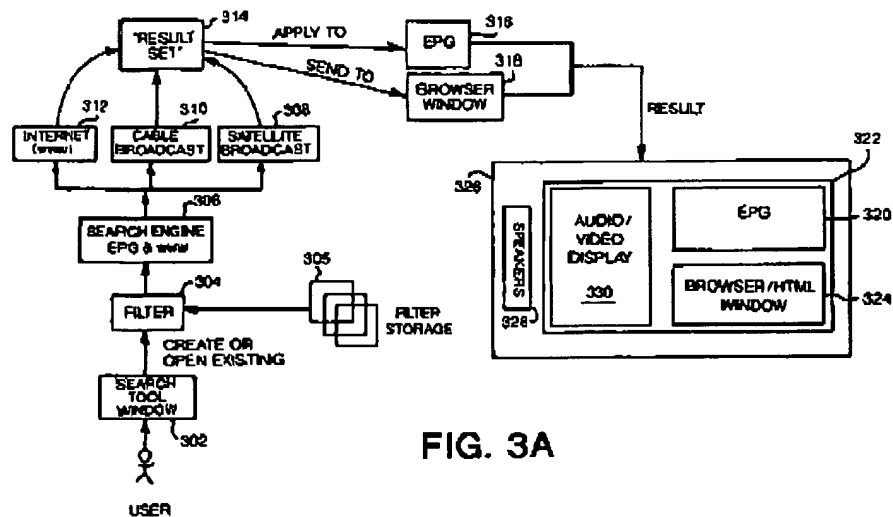


FIG. 3A

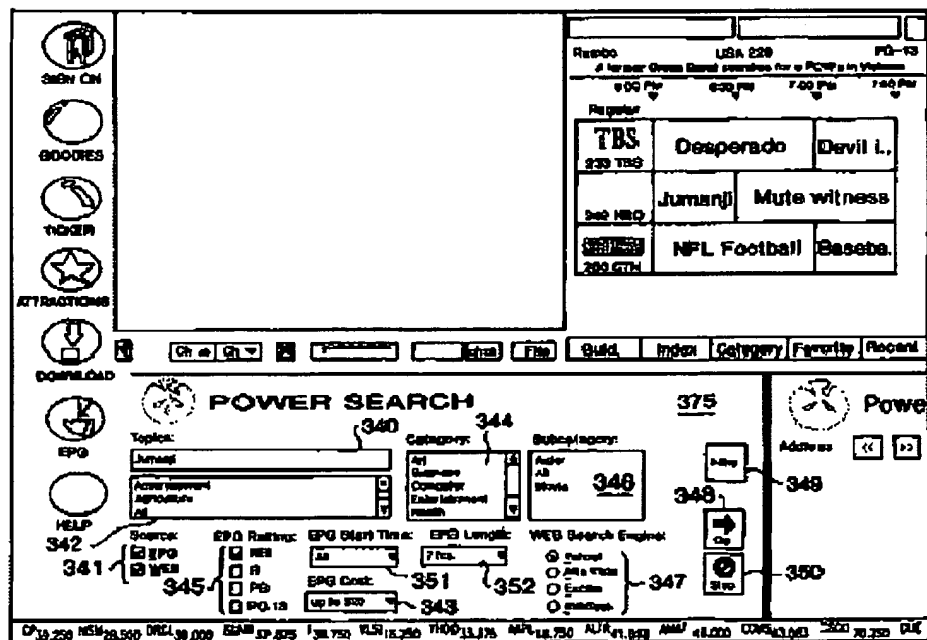


FIG. 3B

The Applicant respectfully traverses for the following reasons:

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a) Legall Does not Teach Performing a Search that Would Result in the Applicant's Invention

Even if Legall were to disclose the a system that is capable of performing a search that would present a result analogous to that of the Applicant's invention, there is absolutely no suggestion or teaching that the user use it to do so.

To suggest that the Applicant's claims are unpatentable on this basis would forego granting patentable status to any invention that used the same parameters shown in Legall, no matter how novel and unobvious the combination. Clearly, this is not the law.

The Final Office Action states:

"In this case, both Boyer and Legall are program guide systems which aide a user in selecting programs to watch."

This alone is not adequate justification for combining Legall and Boyer.

"Boyer enables a user to search by channel, or time. Legall discloses a similar approach but provides many additional search options (see figure 3b) for example, different sources, topics, start times, lengths, etc which enable the user to further refine a search in order to make it easier to find a program of interest"

However, it is undisputed that Legall does not disclose combining these search options to arrive at the Applicant's invention. The Final Office Action then offers the conclusory statement:

"Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Boyer to utilize the star and end times of Legall, in order to only display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest"

However, claim 1 does not specify merely displaying programming within a certain time of day. Instead it recites:

"presenting media program information regarding media programs consisting of all of the media programs scheduled to be available during the first daypart on a channel consisting of the active channel"

The Final Office Action also does not explain how the "search" makes it "easier to find a program of interest" than any other kind of search that Legall could support.

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In fact, the proffered motivation for combining Boyer and Legall (in order to display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest), appears to be hindsight reconstruction using the Applicant's own teaching against him. In truth, the Legall reference, like the Boyer reference, with their multifaceted and complex displays, both teach away from the Applicant's invention.

b) Legall Does Not Disclose a System that is Capable of Performing a Search that Would Present a Result Analogous to the Applicant's Invention

Claim 1 recites that the menu guide content portion presents media program information consisting of *all of the media programs scheduled to be available during the first daypart on a channel consisting of the active channel*. However, (1) neither Legall nor Boyer discloses presenting *all* of the media programs scheduled to be available during the first daypart on a single channel, and (2) Legall's power search function does not teach the ability to limit the search result by channel.

Neither Boyer nor Legall disclose presenting *all* of the media programs scheduled to be available during a daypart on a single channel. Boyer teaches showing program listings that begin in the morning, but it lists more than one channel and probably as a consequence, does not show *all* media programs available during the first daypart. It merely shows the typical programming grid (such as FIG. 9), and the buttons 630 provide shortcuts to a begin the programming grid at a particular time of day. Proof of that lies in Boyer itself. Note that there are 6 of what the Office Action refers to as "dayparts" ("EARLY," "MORNING," "MID-DAY," "AFTERNOON," "PRIME-TIME," and "LATE NITE"), and yet, the duration shown in the programming grid is only two hours. Since two hours times 6 "dayparts" is 12 hours, not the 24-hour period supposedly covered. The unassailable conclusion is that the "dayparts" shown in Boyer are not "dayparts" at all ... just handy shortcuts to begin the programming grid at particular times of the day. In any case ... it is clear that *all* of the media programs in a particular daypart are not shown in the grid.

With respect to presenting all of the media programs to be shown on a particular channel, the Final Office Action argues:

"... Boyer is relied upon to teach restricting a search to a single channel (see col. 10, lines 53-60). Legall is relied upon to teach a number of additional search options, sources, categories, topics, start times, lengths, etc. Modifying Boyer to utilize the additional search

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criteria of Legall, including the time criteria, would result in restricting a search to times for content to be displayed on a single channel.”

The relevant portions of the Boyer reference is reproduced below, along with FIGs. 11 and

12.

40 By channel page 760 of FIG. 11 is presented when the user selects by channel option 512 from program guide menu page 500 (FIG. 8) or when the user clicks on a channel view button, such as channel view button 634 of by time page 600 (FIG. 9). By channel page 760 contains channel list 762. Channel list 762 may be arranged in channel number order and may contain associated icons 764 for certain channels. A user can click on each individual channel 766 in channel list 762 to obtain a list of program information based on the selected channel. For example, the user may select a sports channel to view dynamic information pertaining to a game in progress being televised on that particular channel.

50 When a channel 766 is selected, the user is presented with channel program list page 800, as shown in FIG. 12. The selected channel in the example of FIG. 12 is channel 2. In channel program list page 800, program listings 802 for the selected channel may be arranged in time order, beginning with the current time. If programs in program listings 802 extend into the next day, the programs may be separated by date separation bar 804. Embedded real-time data may appear with the program name in program listings 802, as real-time weather data 807 appears next to the title “College Football Army vs. Navy” in FIG. 12. Title bar 806 contains information identifying the currently selected channel.

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760

UPN GOLD PREVIEW CHANNEL ONLINE TCI

TIME	CHANNEL	CHANNEL DESCRIPTION	CHANNEL DESCRIPTION	CHANNEL DESCRIPTION
CATEGORY	SEARCH			
SELECT DAY TO VIEW		2 KCBS	4 KCBS	
S M T W T F S		5 KTLA	6 ESPN	
1 2 3 4 5 6 7		7 KABC	9 KCAL	
8 9 10 11 12 13 14		10 CNN	11 KTTV	
15 16 17 18 19 20 21		12 MTV	13 KCOP	
SELECT TIME OF DAY		15 FOXA FOX SPORTS WEST	16 LIFE	
EARLY MORNING		17 USA USA NET	18 KSCI	
MID-DAY AFTERNOON				
PRIME TIME LATE NITE				

764 762 768

FIG. 11

800

UPN GOLD PREVIEW CHANNEL ONLINE TCI STAR TREK... VOYAGER

TIME	CHANNEL	TIME & DATE	2 KCBS DESCRIPTION
CATEGORY	SEARCH		
SELECT DAY TO VIEW		11:00AM	COLLEGE FOOTBALL ARMY VS. NAVY (SNOWING)
S M T W T F S		2:30PM	COLLEGE BASKETBALL KANSAS AT UCLA
1 2 3 4 5 6 7		3:00PM	PAID PROGRAM
8 9 10 11 12 13 14		3:30PM	PAID PROGRAM
15 16 17 18 19 20 21		6:00PM	BEACH PATROL
SELECT TIME OF DAY		7:00PM	COAST GUARD
EARLY MORNING		7:30PM	CBS EVENING
MID-DAY AFTERNOON		8:00PM	NEWS
PRIME TIME LATE NITE		9:00PM	ENTERTAINMENT TONIGHT
		10:00PM	DR. QUINN, MEDICINE WOMAN
		11:00PM	EARLY EDITION
		SUN 08	
		12:00AM	WALKER, TEXAS RANGER

PROGRAM INFO

WHAT'S ON BY PREVUE INTERACTIVE...

806 807 802 804

FIG. 12

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Note that what Boyer discloses is not a “search” in the same sense as it is described in Legall. Instead, the interface shown in FIG. 12 is obtained by selecting one of the channel icons shown in FIG. 11.

Note also that when Boyer is used as described, the result is not “presenting media program information regarding media programs consisting of all of the media programs scheduled to be available during the first daypart on a channel consisting of the active channel.”

In light of the foregoing, the Applicant respectfully traverses the rejection of claim 1.

Claim 46 recites features analogous to those of claim 1 and is patentable for the same reasons.

With Respect to Dependent Claims 2, 12, 14-16, 23, 24, 27-43, 47, 57, 59-61, 68, 69, 71-88:

Dependent claims 2, 12, 14-16, 23-24, 27-33, and 35-43 depend on claim 1 and dependent claims 47, 57, 59-61, 68-69, 71-77, 80-85, and 88 depend on claim 46 and are patentable for the same reasons. These claims also include other features rendering them patentable over the Boyer reference.

With respect to the rejection of claims 33 and 34, the Office Action explains that it relied on Boyer for the teaching of an icon and took Official Notice that displaying an icon within a web browser which indicates that a navigation function is executed (was well known in the art).

The Applicants acknowledged that it is well known to change an icon in a web browser when a hyperlink is selected, but that is all. As the Applicants have noted, navigating a web browser is quite a different matter than navigating a menu displayed on a television.

The Applicants also noted that claim 33 recites features that are not disclosed by the references, even if it were appropriate to combine them. Even if Boyer and Legall together disclose an icon (e.g. IE icon in the top right corner of Internet Explorer) that is not a “navigation icon” that “indicates when the *menu content portion* of the menu guide *is activated* for navigation” as recited in claim 33.

The Final Office Action argues:

“Boyer discloses that the webpages disclose hypertext links, (col. 7, lines 42-53). Thus whenever a link is navigated too the IE menu icon would be momentarily displayed upon activation of the link.”

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However, all that indicates is that a hyperlink was selected somewhere on the browser and that the browser is collecting information from a source at the URL associated with the link. It does not indicate when a *menu content portion* of the menu guide is activated for navigation.

With Respect to Claims 91, 92, 94, and 95: Claim 91 recites:

*A method of presenting advertising in a menu guide, comprising the steps of:
accepting advertising media content and a media program from a media content provider; and
providing the media program information to a subscriber on an active channel; and
providing a menu guide selected from a plurality of menu guides together defining a media program information space segmented by daypart, wherein the menu guide includes a menu guide content portion presenting media program information for media programs consisting of all of the media programs scheduled to be available on the active channel during a daypart selected from a current daypart and a selected daypart.*

and claim 92 recites:

*A menu guide for presenting media program information, comprising:
a menu guide content portion presenting media program information regarding media programs consisting of all of the media programs scheduled to be available during a first daypart on a selected channel;
and
wherein the menu guide is selected from a plurality of menu guides together defining a media program information space segmented by a daypart.*

According to the Office Action, Boyer discloses all of the above features except "displaying solely all of the media programs scheduled to be available on the channel during the first daypart."

The Applicants respectfully disagree for the reasons described above with respect to claim 1.

Claim 94 recites:

*A method of presenting media program information describing at least one media program, comprising the steps of:
accepting a command to access the media program information at a time of day;
determining a first daypart selected from the group comprising a current daypart defined from the time of day and a selected daypart; and
providing a menu guide having menu guide content including media program information, the media program information describing media programs consisting of all of the media programs scheduled to be available during the first daypart on a selected channel.*

Claim 94 recites features analogous to those of claims 1, 46, 91, and 92 and is patentable for the same reasons.

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Claim 94 is also patentable for additional reasons as well. Legall teaches "power" searching for media programs by start time, but there is no attempt whatsoever to relate that search with anything analogous to a "current daypart determined from the time of day". Boyer, at best, teaches presenting its display (which does not present all of the media programs scheduled to be available during a daypart on a channel) and offering an optional searching capability that is unrelated to the *current* daypart. There is no teaching whatsoever to "determine a first daypart selected from the group comprising a *current daypart defined from the time of day and a selected daypart.*"

Relying on the following passages:

rently being broadcast. For example, if the current time is between 1:30 P.M. and 2:00 P.M., program listings 620 may begin with programs that start at 1:30 P.M. Programs in program listings 620 that are reflective of televised events in progress provide dynamic information about those events by way of embedded real-time data 650. Embedded real-time

Cursors 622 and 624 (FIG. 9) are used to navigate to earlier or later time periods, respectively. Web browser cursors 626 and 628 allow the user to scroll through the program listings. The user may also navigate the program listings with time navigation buttons 630. For example, if the user would like to view program listings that begin in the morning, the user clicks on the morning navigation button 630. If the user would like to view program listings for

the Final Office Action argues that:

"Boyer teaches determining a first daypart selected from the group comprising a current daypart defined from the time of day (col. 9, lines 2-7) and a selected daypart (col. 9, lines 28-36). The current daypart is displayed to a user based on the current time. Alternatively a user may choose a daypart to navigate to."

However, the first passage merely says that the program guide can start at the current time. But it displays program information for the media programs beginning at that current time and extending for some period forward ... it does not disclose determining the daypart defined from the time of day, nor does it provide media program information describing media programs consisting of *all* of the media programs scheduled to be available during the first daypart on a selected channel.

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It shows information for *all channels*, excludes programs before the current time, and does not extend through an entire daypart.

The second passage merely discloses buttons 630 that can be used to quickly navigate the program grid in time. But that navigation does not result in a display that shows all of the media programs that provided in a daypart on one channel.

Claim 95 recites features analogous to those of claim 94 and is patentable for the same reasons.

3. Claims 3-5, 8-10, 17-22, 25, 48-50, 53-55, 62-67, and 70 are Patentable Over Boyer in View of Legall and in Further View of Alexander

In paragraph (3), the Office Action rejected claims 3-5, 8-10, 17-22, 25, 48-50, 53-55, 62-67, and 70 under 35 U.S.C. §103(a) as unpatentable over Boyer in view of Legall, and further in view of Alexander et al. (Alexander), U.S. Patent No. 6,177,931. Applicant respectfully traverses these rejections.

With Respect to Claims 3-5, 8-10, 17-22, 25, 48-50, 53-55, 62-67, and 70:

Claim 3 recites that "the menu guide further comprises a channel portion indicating *the* active channel". The Office Action argues that Alexander discloses a cursor that can be used to highlight an "active" channel as follows:

In FIG. 2 of the drawing, one embodiment of a remote controller 26 for activating the functions of display 10 is shown. Remote controller 26 could have other keys for activating the functions of a user video device, such as a television receiver, a VCR, or a cable box. Remote control 26 has up, down, right, and left arrows keys 28, 30, 32, and 34, respectively, for controlling the movement of a cursor 36 on display 10. Cursor 36 can select, i.e., highlight, any of windows 12, 14, or 16 by pressing arrow keys 28 to 34, any of the titles and channels in Grid Guide 22 by pressing arrow keys 32 and 34, or navigation bar 20 by pressing arrow keys 32 and 34. Windows 12, 14, and 16 are highlighted by adding a border around the window or changing the color of the border, if the border is permanent. The titles and channels in Grid Guide 22 and navigation bar 20 are highlighted by changing color.

The Applicants respectfully responds that (1) neither Boyer, Legall, nor Alexander disclose a channel portion (distinct from the menu guide portion of claim 1), and (2) all Anderson discloses is that the

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portions of the menu guide portion can be highlighted with a cursor. That does not indicate what the active channel is, and does not disclose a separate portion indicating the active channel.

Claim 17 recites advertising content that is determined by a provider of the media program provided on the active channel. The Office Action argues:

"Alexander discloses in figure 1, a PIP window 12 that plays video for the last tuned channel, or the currently highlighted channel (column 3, line 63 - column 4, lines 27) , panel advertisements may be displayed in windows 14 and 16 (column 21, lines 39-54), and a virtual parent ad 52, which is contextually related to the channel displayed above it (column 22, lines 34-47, column 23, lines 12-19), thus providing many opportunities to view and advertisement"

"The Examiner takes official notice that a media provider determining advertising content on an active channel is notoriously well known in the art. For example, during a Super Bowl national advertisements for Pepsi are displayed during a commercial break, thus guaranteeing that a large number of viewers would see an advertisement and enable the ability to charge the advertiser for more money for airtime for a correspondingly larger viewership."

The Applicant responded:

"Sponsored advertising is old in the art of course, but that has little to do with advertising presented in the context of a menu guide. It is one thing to have the media program provider determine the advertising content provided in their own signal, it is quite another to have the media program provider do so in an interface that they do not generate or have control over (e.g. the menu guide). Indeed, providing advertising content in an advertising content portion would be *redundant* as that information is already provided to the viewer via the FIG."

The Final Office Action's response appears to confuse the subject matter of claim 18 with that of claim 17. Claim 18 recites that the advertising content is contextually related to the media program on the active channel. Claim 17 recites that the content is *determined by the provider of the media program on the active channel*, not just contextually related to it. In any case, Alexander teaches Channel Ads that are placed *within* the menu guide content portion, not a (separate) *advertising content portion*.

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4. Claims 44, 45, 89, and 90 are Patentable Over Boyer in View of Legall, and in Further View of Sampsell

In paragraph (4), the Office Action rejected claims 44, 45, 89, and 90 under 35 U.S.C. §103(a) as unpatentable over Boyer, in view of Legall, and further in view of Sampsell, U.S. Patent No. 6,219,839. Claims 44, 45, 89, and 90 recite the features of the independent claims they depend upon and are patentable on this basis.

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V. CONCLUSION

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Respectfully submitted,

Date: May 3, 2006

By: 

Name: Georgann S. Grunbach

Reg. No. 33,179

The DIRECTV Group, Inc.
RE/R11/A109
2250 E. Imperial Highway
P. O. Box 956
El Segundo CA 90245

Telephone No. (310) 964-4615

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